

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EKUA OFORI,

Plaintiff,

-against-

BJ'S WHOLESALE CLUB, INC.,

Defendants.
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ORDER

18-CV-5940 (ENV) (SMG)

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ APR 18, 2019 ★
BROOKLYN OFFICE

VITALIANO, D.J.

This action, originally filed by plaintiff Ekua Ofori in Kings County Supreme Court on August 27, 2018, was removed by defendant BJ's Wholesale Club, Inc., on October 24, 2018. *See* Dkt. No. 1 (notice of removal); Dkt No. 1-1 (state court complaint). After her initial motion to remand, filed on November 21, 2018, was denied without prejudice for failure to comply with the Court's individual rules, Ofori properly filed a fully-compliant motion to remand on January 25, 2019. Dkt. No. 10. The Court respectfully referred the motion to Magistrate Judge Steven M. Gold. *See* Order dated Jan. 28, 2019.

By his Report and Recommendation ("R&R"), dated March 7, 2019, Judge Gold recommended that the motion to remand be granted because of defendant's failure to timely remove the action from state court. Dkt. No. 11. Additionally, Judge Gold recommended that the Court award plaintiff attorney's fees because, as the R&R reasoned, defendant relied "on a plainly unsupportable reading of both the statute and the relevant case law," rendering its basis for seeking removal "not objectively reasonable." *Id.* at 7. But, Judge Gold conditioned his recommendation to award attorney's fees on plaintiff's counsel providing contemporaneous billing records "within the time for filing objections" to the R&R – namely, by March 21, 2019. With notice of the time to object properly given, no party filed an objection to the R&R and

plaintiff did not provide any billing records. The time to do either has passed.

Where no timely written objection has been filed, a district judge need only review an R&R for clear error. *See Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). In accordance with that standard of review, the Court has carefully examined Judge Gold's R&R and finds it to be correct, well-reasoned and free of any clear error. The Court, therefore, adopts the R&R, in its entirety, as the opinion of the Court.

Conclusion

For the foregoing reasons, Judge Gold's R&R is adopted, in its entirety, as the opinion of the Court. Plaintiff's motion is granted, and this action is remanded to Kings County Supreme Court. Because no billing records were submitted by plaintiff, attorney's fees to cover costs incurred in moving to remand this action to state court will not be awarded.

The Clerk of Court is directed to return this action to Kings County Supreme Court, to enter judgment accordingly and to close this case.

So Ordered.

Dated: Brooklyn, New York
April 15, 2019

/s/ USDJ ERIC N. VITALIANO

ERIC N. VITALIANO
United States District Judge